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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/049,927	03/30/1998	PASCAL ARNAUD	2350-60	6226

7590

11/14/2002

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EXAMINER

HUANG, EVELYN MEI

ART UNIT

PAPER NUMBER

1625

DATE MAILED: 11/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/049,927

Applicant(s)

ARNAUD ET AL.

Examiner

Evelyn Huang

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38,40,44-63,68-75 and 84-153 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 38,40,44-63,68-75 and 84-153 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Claims 38, 40, 44-63, 68-75, 84-153 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38, 40, 44-63, 68-75, 84-153 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP S62-238212 , or JP H1-283209 or JP H4-57894 or JP H7-48828 in view of JP S64-79106, JP H5-178865, page 359 of 'Cosmetic Raw Materials Standard', page 1081 of 'International Cosmetic Ingredient Dictionary and Handbook', EP 133 964, the 'Technical Data. Polywax Polyethylene', Toyo Petrolite Co. Ltd, 'Shin Etsu Silicone Oil', Shin Etsu Chemical Industry Co (all references cited in PTO-1449).

Example 3 of JP S-62-238212 discloses a lipstick composition comprising 7% polyethylene wax and 40 % methylphenyl polysiloxane (1000 cs) and other customary ingredients.

Example 2 of JP H1-283209 discloses a lipstick composition comprising 4% polyethylene wax and 37 % methylphenyl polysiloxane.

Example 3 of JP H4-57894 discloses a pencil-shaped eyeliner composition comprising 13% polyethylene wax and 10 % methylphenyl polysiloxane.

Example 2 of JP H7-488228 discloses a lipstick composition comprising 3% polyethylene wax and 10 % methylphenyl polysiloxane (KF 56).

The above example compositions additionally contain other fatty substances and ingredients found in conventional cosmetic compositions.

The above prior art example compositions differ from the instant in not specifically describing the chemical formula of the silicone oil and specifying the molecular weight and the melting point of the wax.

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However, the conventionally used wax in a cosmetic composition are polyethylene wax, such as the commercially available Polywax 500 (MW=500), Polywax 655 (MW=700), or the polyethylene-polypropylene copolymer wax, such as the commercially available Petrolite CP-7 (H1-314883). The melting points of these waxes, which are intrinsic to the particular wax and are within the range recited in the instant claims, are described in the Technical Data. Polywax Polyethylene', Toyo Petrolite Co. Ltd. These are the same waxes described in the instant example compositions and in the instant claims 56, 60, 68.

According to page 359 of 'Cosmetic Raw Materials Standard', 'methylphenyl polysiloxane' of the prior art example compositions 'has a structure of a linear dimethyl polysiloxane with a part of its methyl groups being replaced with phenyl groups, or phenyl groups and trimethylsiloxy groups'. An example of methylphenyl polysiloxane, KF 56, has a viscosity of 10 to 20 cs ('Shin Etsu Silicone Oil', Shin Etsu Chemical Industry Co.) and FK 56 is the trade name of phenyl trimethicone, which is recited in instant 45, 46, 49, 50, 53, 54, 57, 58, 61, 62, 69, 70, 73, 74. The formula of the instant silicone oil has also been specifically described in EP 133964 as an ingredient in an anhydrous, homogeneous cosmetic composition (page 3, formula 2; page 6, example composition for eye shadow). The polymethylphenylsiloxane in the example composition would be the same as the phenyltrimethicone of instant claims 45, 46, 49, 50, 53, 54, 57, 58, 61, 62, 69, 70, 73, 74.

At the time of the invention, one of ordinary skill in the art would be motivated to employ the commercially available Polywax 500, Polywax 655 or Petrolite CP-7 together with the methylphenyl polysiloxane as specifically described by EP 133964 to arrive at the instant invention with the reasonable expectation of obtaining a homogenous cosmetic composition.

The additional fatty substances recited in the instant claims 84-153 are conventional ingredients found in a cosmetic composition, as described in the example composition of JP S62-238212, JP H1-283209, JP H4-57894, JP H7-48828 and/or EP 133964. The various additional waxes are also described in claim 5 of EP133964. At the time of the invention, the skilled artisan would be motivated to include these additional ingredients customarily known in the cosmetic art to the prior art example composition to arrive at the instant invention. In the absence of unexpected results, the instant is prima facie obvious of the prior art of record.

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Conclusion

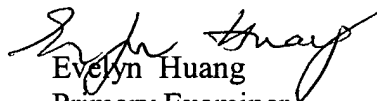
3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn Huang whose telephone number is 703-305-7247. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703-308-4698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


Evelyn Huang
Primary Examiner
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November 7, 2002